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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/767,602	01/22/2001	Brennan J. McTernan	4700-6	2523
29858	7590	07/16/2004	EXAMINER	
BROWN, RAYSMAN, MILLSTEIN, FELDER & STEINER LLP			MANIWANG, JOSEPH R	
900 THIRD AVENUE			ART UNIT	
NEW YORK, NY 10022			PAPER NUMBER	
			2144	

DATE MAILED: 07/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/767,602

Applicant(s)

MCTERNAN ET AL.

Examiner

Joseph R Maniwang

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12/20/02.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01/22/01 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date see Office Action.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Information Disclosure Statement

The information disclosure statements (IDS) submitted on 02/11/02, 08/02/01, and 05/21/01 were in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statements were considered by the examiner.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Colby et al. (U.S. Pat. No. 6,449,647), hereinafter referred to as Colby, and further in view of Monteiro et al. (U.S. Pat. No. 5,983,005), hereinafter referred to as Monteiro.

Colby disclosed a method and system for communicating packets using content-aware switching. Data transfer was initiated through a client request for content, which a flow director responded to by generating a list of candidate servers able to fill the request (see column 7, lines 24-32). The server list was based on the type of request and located among a plurality of database records storing such information (see column 9, line 66 through column 10, line 8). The server was also listed in a prioritized list according to type (see column 11, lines 13-27). The system then attempted to establish

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a connection to one of the candidate servers for delivery of content (see column 8, line 38 through column 9, line 4; column 14, lines 50-61). Content included multimedia content, such as streaming video/audio, interactive TV, entertainment, or news (see column 9, Table 1). Identified servers included a router connected to content servers (see column 16, lines 28-47; Fig. 21a).

While Colby disclosed generating a list of candidate servers and attempting to establish a connection to one of the servers, Colby did not specifically disclose determining whether a connection may be made to a first server identified in the server list for content delivery, and determining whether a connection may be made to a second server in the list for content delivery if the first connection was unsuccessful, repeating such attempts until a connection was successful. Colby further did not specifically disclose establishing connections to multicast routers capable of unicast/TCP-out connections.

In a related art of network communications, Monteiro disclosed a system for delivery of multimedia content. The invention of Monteiro was similar to that of Colby in that it received at a client a sorted list of servers capable of fulfilling a request selected from a content list (see column 14, lines 8-24, 50-60). From this server list, the client software automatically determined whether a connection could be made to the first server on the list for content delivery, and if unsuccessful, then repeated this attempt on the ordered list of servers until a connection was established (see column 14, line 61 through column 15, line 19). Additionally, Monteiro disclosed that the use of TCP and UDP in multicasting communications was well known for delivering multimedia content,

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such as high-quality audio/video streams, graphics, and text (see column 1, lines 29-59; column 4, lines 13-22). Monteiro disclosed delivering multimedia content parts in the form of packets (see column 5, lines 60-67). To deliver the packets, Monteiro disclosed the use of media servers to function as routers for content. Monteiro disclosed both multicast and unicast possibilities. A media server could be used to route multicast streams to clients, or alternatively a unicast transmission could be used (see column 6, lines 9-28). Monteiro further disclosed the use of TCP (see column 6, line 60 through column 7, line 4). Most importantly, Monteiro disclosed that the multicast delivery structure could be implemented using a combination of unicast/multicast connections (see column 6, lines 51-55).

It would have been obvious to one of ordinary skill in the art at the time of invention to combine the teachings of Colby and Monteiro to provide a system for delivering multimedia content by sending to a client an ordered list of servers capable of fulfilling the client's request for content, successively determining whether a connection may be made to the list of servers until a connection was established, and the servers including multicasting routers with the provision for unicast/TCP connections as claimed. One of ordinary skill would have been motivated to consider the teachings of Monteiro concerning the combined use of multicast and unicast/TCP for the potential gain in efficiency and guarantees they offered in multimedia content delivery systems (see column 6, lines 51-59). Furthermore, the teachings of Monteiro would have benefited the system of Colby as they provided a highly scalable architecture for

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delivery of multimedia content (see column 2, lines 6-11; column 3, lines 58-65; column 5, lines 51-59).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Katariya (U.S. Pat. No. 6,226,635) disclosed a system for processing client queries using a proxy server.

Schuetze et al. (U.S. Pat. No. 6,751,612) disclosed a search method for locating servers matching the criteria of a client query.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph R Maniwang whose telephone number is (703) 305-3179. The examiner can normally be reached on Mon-Fri 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William A Cuchlinski can be reached on (703)308-3873. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JM



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